PUBLIC FINANCE BERHAD

v.

CHING YIK CREDIT SDN. BHD. & 2 ORS.

HIGH COURT MALAYA, IPOH
ABDUL MALEK AHMAD J
[CIVIL SUIT NO. 23-266-86]
21 OCTOBER 1988

CIVIL PROCEDURE: *Final judgment under O. 14 of the Rules of the High Court - Guarantee - Whether interest should only be calculated from the date of demand and not before that.*

The plaintiff obtained final judgment against the second and third defendants under O. 14 of the Rules of the High Court 1980. The defendants who were guarantors, raised the issue *inter alia* that since the notice of demand was dated 11 October 1985, the rate of interest could only be calculated from the date of demand and not before that.

Held:
By virtue of the contract of guarantee, the defendants had agreed to pay interest of the rate of 15.5% per annum or such other rate as may from time to time be decided by the plaintiff in their absolute discretion. In short, the contract did not state that interest cannot be levied before the date of demand.

[Appeal dismissed with costs.]

For the plaintiff - C.H. Teoh; M/s. Yeoh Kian Teik & Co.
For the second & third defendants - K.Y. Teo; M/s. Gibb & Co.

JUDGMENT

Abdul Malek Ahmad J:

The plaintiff had applied by way of summons-in-chambers filed on 19 December 1986 for summary judgment against the second and third defendants for RM328,702.53 sen as at 10 December 1986 inclusive of interest thereon and continuing until realisation and costs. On 19 October 1987, the learned Senior Assistant Registrar held that there were no triable issues and granted the application under O. 14 of the Rules of the High Court 1980.

Against that decision, the second and third defendants had appealed. Before me, learned Counsel for the second and third defendants raised the issue that, at the time of the demand, both the said defendants were only liable under the guarantee to pay up to a limit of RM220,000 and interest thereon at the rate of 2% per annum above the base lending rate of 13.5% or such other rate as may from time to time be stipulated by the plaintiff. Learned Counsel added that the notice of demand dated 11 October 1985 sent to all three defendants had stated that, as at 28 September 1985, the outstanding sum was RM245,697.58 sen due which he said was clearly wrong as interest could only be calculated only from the date of demand and not before that.

Further, learned Counsel contended that the words "per annum" denoted a calculation on a yearly rest as opposed to a monthly rest. Finally, Counsel argued that the computation of the judgment sum was explained in the plaintiff's letter to the defendants' solicitors dated 16 March 1987 where the interest rate was given as 18% which was manifestly high. In short, the appeal was only as regards the alleged erroneous calculation by the plaintiff.

For ease of reference, it is necessary to reproduce the preamble and first paragraph of the relevant guarantee which reads:

> To,
>
> Public Finance Berhad
>
> In consideration of your agreeing at my request to advance to or on behalf of M/s. Ching Yik Credit Sdn. Bhd. of No. 71-A, Jalan Chung Thye Phin, Ipoh, Perak (hereinafter referred to as the "borrower") the sum of Dollars Two hundred and twenty thousand (RM220,000) only as a loan (hereinafter called the "said loan") for such period as you may at your absolute discretion stipulate I, The Undersigned
>
> Chong Kow (NRIC. No. 0622235) and Wong Ying Yee (NRIC. No. 8298772) both of No. 60, Jalan Chung Ah Ming, Ipoh, Perak
>
> Hereby agreed to undertake and guarantee you as follows:
>
> 1. To pay you on demand all every and any part of the said loan and interest thereon at the rate of 2.0% above BLR (13.5%) per annum or such other rate as may from time to time be stipulated by you in your absolute discretion (which said rate or any variation thereof is hereinafter referred to as the "Prescribed Rate") which now is or shall at any time be owing or remain due and unpaid to you from the borrower together with any commission and other expenses and all costs charges and expenses which you may incur in enforcing or seeking to enforce any security for or obtaining or seeking to obtain payment of all or any part of the moneys hereby guaranteed and to make good any default by the borrower or his estate in payment of the said loan or any part thereof and all interest thereon.

Without the necessity of any reference to any case authorities and based on common sense and logic upon a proper reading of the said excerpt, it is abundantly clear that the second and third defendants had agreed by that guarantee to pay RM220,000 with interest at the rate of 15.5% per annum or such other rate as may from time to time be decided by the plaintiff in their absolute discretion in addition to any other commission, expenses, costs and charges. Nowhere is it stated that the interest cannot be levied before the date of demand. The relevant explanatory letters from the plaintiff had in fact clarified the mode of calculation.

On these considerations, I was of the view that the arguments of Counsel for the second and third defendants were devoid of merit and I concurred with the decision of the learned Senior Assistant Registrar.

In the event I dismissed the appeal with costs.

Also found at [1989] 1 CLJ 1115